

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lawanda M Stanley doing business as Pinon Hill Water Company (U426W) to sell and Vierra LLC to buy the water system in Tehachapi, California, County of Kern.

Application 13-12-008
(Filed December 6, 2013)

**DECISION AUTHORIZING TRANSFER OF OWNERSHIP
AND CONTROL OF PINON HILL WATER COMPANY
FROM LAWANDA M. STANLEY TO VIERRA LLC**

Summary

Pursuant to Pub. Util. Code §§ 851-854, this decision grants authority to Vierra LLC (Vierra) to buy Pinon Hill Water Company (Pinon Hill) in Tehachapi, California. As a condition of this decision, Vierra must receive permits to operate the water system from Kern County and from the California Department of Public Health, and file copies of such authority in this docket within 30 days of receipt of such authority. Vierra must not take possession of and not collect tariffed rates from the customers of Pinon Hill until it has received such permits to operate.

This decision does not change rates and it ensures that ratepayers continue to receive safe and reliable water service. The safety of the drinking water supply is primarily regulated by the California Department of Public Health whereas this Commission primarily regulates the operational reliability of Pinon Hill. This transfer will allow for the continued provision of safe and reliable water service.

This proceeding is closed.

1. Background

On December 6, 2013, Vierra LLC (Vierra) filed an application to acquire Pinon Hill Water Company (Pinon Hill) in Tehachapi, California, and Lawanda M Stanley, doing business as Pinon Hill, to transfer the water system for a selling price of \$60,000. (Application at 3.) The transaction is treated as a selling of assets. (Application, Ex. A, Agreement for Purchase and Sale, at 1.) The transaction is unopposed.

2 Description of Pinon Hill

Pinon Hill is a very small Class-D water company: 34 metered and two flat rate customers; it has one 6-inch diameter well; one 12,500 gallon steel storage tank, one parcel of land; and minor amounts of the requisite equipment to operate. The purchase agreement says there are 43 customers, the 2012 Annual Report only shows 26 meters. The 2012 net income was \$165.55.

3. Standard of Review

Proposed water utility ownership changes are reviewed under Public Utilities (Pub. Util.) Code §§ 851-854 which prohibits the sale or transfer of control of a public utility without the advance approval of this Commission.

The primary standard by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether or not the transaction will be “adverse to the public interest.”¹

As part of its determination, and where a company acquiring control of a public utility does not already possess a Certificate of Public Convenience and

¹ See Decision (D.) 03-12-033 at 6; D.01-06-007 at 15.

Necessity in California, the Commission applies the same requirements that govern a new applicant to exercise the type of authority held by the company being acquired.

The applicants have provided information that reflects that the proposed change in ownership will not adversely impact Pinon Hill's operations or financial status. Applicants have provided information that demonstrates that the acquiring party has sufficient managerial and technical expertise and sufficient financial resources to operate the water company.

As for financial qualifications, the attached financial information as Exhibit D, showing that Vierra is solvent. Additionally, in Attachment E, the application also shows that Jason Vierra, one of the buyers, is enrolled in a Water Distribution Operator course at Antelope Valley College, and will take the California D2 certificate examination. We are conditioning this approval on Vierra obtaining all necessary permits and licenses. Louise Vierra will run the day-to-day operations including the billing, books, and meter reading. (Exhibit E.)

4. Service Quality

The California Department of Public Health approves the transfer of a public water system through its issuance of a public water system operating permit to the new owner. In this regard, it looks to the technical, managerial and financial capabilities of the new owner in deciding to issue an operating permit.

5. Service Continuity

The seller wishes to sell Pinon Hill citing her age and failing health. (Application at 3.) Therefore, it is reasonable to allow a suitable buyer to acquire the business and continue operation.

6. Purchase Price

The buyer agrees to pay \$60,000 either all cash on closing or \$48,000 in cash and a \$12,000 promissory note to the seller with terms of four years and an annual interest rate of four percent. (Exhibit A.) The attached financial statements of Vierra suggest that the new owner will have sufficient financial stability to operate the company.

7. The California Quality Act (CEQA) Does Not Apply

We have reviewed the application to determine whether CEQA applies to this proposed transaction.

While the sale of utility assets may be a project under CEQA, we find that based on the record before us it can be seen with certainty that this transfer of control will not have a significant effect on the environment.²

9. Permits Required by Other Agencies

Pursuant to the provisions of California Health and Safety Code (CH&S) § 116525(a), any person or entity operating a public water system must have a permit to operate that system from California Department of Public Health. A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the public health requirement that the new owner

² A project is exempt from CEQA if:

- (3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. (CEQA Guidelines § 15061(b)(3).)

“possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, and potable drinking water.”³

Therefore, in addition to the authorization from the Commission for the acquisition of the system, the new owner must also apply for and receive permits from the California Department of Public Health to operate the system.

Because the required permits have been requested but not yet received, we condition our approval for the sale herein requiring the receipt of these permits to operate the system. Vierra must also file copies of such permits in this docket within 30 days of receipt of such permits. Vierra may not take possession of the system or collect tariffed rates from customers until it has received operating permits.

The business is located in Kern County, therefore Vierra must also file by advice letter copies of any county business permits, etc., imposed by Kern County.

9. Safety Considerations

The Commission has constitutional and statutory authority and responsibilities to ensure that regulated water companies provide water service in a manner that protects the public health and safety at reasonable rates. (Cal. Const., art. XII, §§ 3, 6; Pub. Util. Code §§ 451, 701 and 768.) The current owner cites her age and failing health as motivations for selling Pinon Hill, and the buyer has presented credible evidence that it is financially qualified and will be technically qualified to own and operate the company. Approval of the proposed transfer of the company to capable and qualified hands (Vierra LLC)

³ CH&S Code § 116540(a).

promotes the safety, health, comfort, and convenience of Pinon Hill's patrons, employees and the public.

We remind the buyer Vierra LLC that Pinon Hill is required to comply with all pertinent State and Federal statutes, regulations, and orders pertaining to the provision of safe drinking water. In the Annual Report filings required of all water utilities, and in all of Pinon Hill's future requests for approval to increase rates or charges, Pinon Hill shall report all citations from the California Department of Public Health and raise and address any safety concerns. Pinon Hill must immediately communicate any urgent safety or emergency concerns to the Commission through its Executive Director of Division of Water and Audits.

10. Conclusion

Both parties desire the transfer of the system to Vierra. Lawanda M. Stanley, doing business as Pinon Hill, wants to exit the water utility business. Vierra has the ability, is obtaining the operator permits, and has sufficient financial resources to operate the system. The terms and conditions of service will remain unchanged as a result of the acquisition. There will be no immediate change in rates.

We conclude that the proposed sale is reasonable, in the public interest, and will provide benefits to ratepayers, which include continued provision of safe and reliable water service by a water service provider that has the operational experience and financial ability to operate and own the system. We therefore conditionally approve the application for sale as of the date of this decision. Because Vierra has not yet received permits from the California Department of Public health and Kern County, we condition our authority on the

receipt of these permits, and require that Vierra file copies in this docket as a condition to exercise the authority granted herein.

Vierra may only charge currently authorized tariffed rates, and is bound by all Commission decisions, rules, and regulations applicable to regulated water utilities. Vierra must file a Tier 1 advice letter within 30 days of taking ownership of the water system in order to update the tariff sheets with its new ownership information.

The sale relieves Lawanda M Stanley, doing business as Pinon Hill, of the duty to provide safe and reliable public utility water service. The conditional authority granted herein is not a finding of the value of the rights and property being sold.

11. Categorization and Need for Hearing

In Resolution ALJ 176-3328, the Commission preliminarily categorized this application as ratesetting. Because there were no protests, the preliminary determination that hearings were necessary is changed to no hearings necessary.

12. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

13. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The sale is desired by both parties.
2. Lawanda M. Stanley, doing business as Pinon Hill, no longer desires to continue doing business as a regulated public utility.

3. The transaction is unopposed.
4. Vierra has sufficient business experience and training to provide water services.
5. The purchase price of the system is \$60,000, to be paid upon closing the transaction.
6. Vierra has the financial net worth and sufficient liquid assets to own and operate the water system.
7. Vierra is obtaining the necessary permits from the California Department of Public Health and is obtaining needed operator training.
8. Vierra will obtain any needed permits from Kern County.
9. The sale will have no significant effect on the environment.

Conclusions of Law

1. The Commission regulates Pinon Hills as a Class D water utility.
2. The purchase price is reasonable.
3. The buyer is reasonably qualified to operate Pinon Hills once the California Department of Public Health and Kern County issue all requisite permits.
4. The transaction is exempt from CEQA pursuant to CEQA Guideline Section 15061(b)(3).
5. Approval of the proposed transfer of the company to capable and qualified hands (Vierra LLC) promotes the safety, health, comfort, and convenience of Pinon Hill's patrons, employees and the public.
6. The sale should be approved as in the public interest.
7. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. Vierra LLC may conditionally acquire Pinon Hill Water Company (Pinon Hill) in Tehachapi, California from the current owner Lawanda M. Stanley, doing business as Pinon Hill, within 30 business days upon receipt of all necessary permits from the California Department of Public Health and Kern County.
2. Vierra LLC (Vierra) must file copies of all permits, when acquired from the California Department of Public Health and Kern County, within 30 business days by a Tier 1 Advice Letter. Vierra must also file by Tier 1 Advice Letter, separately or with the permits, new tariff sheets which reflect the new ownership and which clearly indicate the operating name of the utility as used by Vierra for all commercial purposes.
3. Vierra LLC must notify the Director of the Division of Water and audits within 30 days of the final closing of the transaction.
4. Pinon Hill Water Company and Vierra LLC as owners and operators shall comply with all pertinent State and Federal statutes, regulations, and orders pertaining to the provision of safe drinking water.
5. Pinon Hill Water Company shall report citations from the California Department of Public Health in both its Annual Report filings to the Commission and in future requests for approval to increase rates or charges.
6. Pinon Hill Water Company shall immediately communicate any urgent safety or emergency concerns to the Commission through its Executive Director and Division of Water and Audits.

7. All existing rates remain in effect for Vierra LLC that are currently authorized for Lawanda M. Stanley, doing business as Pinon Hill Water Company.

8. The hearing determination is changed to no hearings necessary.

9. Application 13-12-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.